IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 6365 OF 2006.

Kailas Pandurang Pawar & ors. ... Petitioners.
V/s.
Thane Municial Corporation & ors... Respondents.

Shri S.G. Aney, Senior Counsel with Shri M.D. Negle and Suchad Yadav i/b Ms. Neeta Karnik for the petitioners.

Shri C.U. Singh,Senior Counsel with Rahul D. Oak for respondent Nos. 1 & 2.

Shri R.S. Apte with Shri M.S. Lagu for respondent No.3.

CORAM : V.C.DAGA, J.

DATED : 25.9.2006.

P.C. :

. This petition is directed against the order dated 18.9.2006 passed by the Industrial Court, Thane, in Complaint (ULP) No.238/2006, refusing to grant interim relief.

Factual Matrix:

2. Factual matrix reveals that petitioners are working under respondent Nos. 1 & 2; the Thane Municipal Corporation Transport Undertaking ('Undertaking' for short) as permanent workers. The respondents issued an advertisement dated 27th September, 2005 inviting the tenders from the

contractors for hiring buses, for transport services to be provided in the area of the respondent No.1, Thane Municipal Corporation, ('the Corporation' for short). The tenders received were processed. It appears that the workers by their letter dated 12.7.2006, practicably; after more than 10 months approached the Deputy Commissioner of Labour, Thane, with following demands:

1. That the Corporation should not engage buses on contract basis to provide transport service.

2. The Corporation should not recruit Driver Mechanic, Supervisor, Electrician and other workers on contract basis.

The Assistant Commissioner of Labour, by his notice dated 18.7.2006 invited respondent No.2 to the meeting scheduled to be held on 20.7.2006. It, thus, appears that demands were admitted in conciliation proceedings.

3. It appears that respondent No.1- Corporation has decided to award tenders and to take buses on hire on and from 1st September 2003. The workers came to know about this decision of the respondent -

Corporation and chose to file Complaint(ULP) No.238 of 2006 in the Industrial Court, Thane, under section 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('the said Act') and prayed for interim relief in the aid of substantive relief which came to be rejected by the impugned order dated 231.8.2006, referred to hereinabove.

. Being aggrieved by the aforesaid order, petitioners have filed the present petition under Article 226 & 227 of the Constitution of India.

4. Shri S.G. Aney,learned Senior Counsel appearing for the petitioners, urged that this petition has been filed in a representative capacity on behalf of all the workers of the Undertaking. He further submits that minutes of the meeting dated 23rd June, 2004 (reproduced at page 35 of the paper book) would partake the nature of agreement as contemplated in the industrial legislation; as such, breach thereof during the pendency of the conciliation proceedings is actionable under section 33(1) of the Industrial Disputes Act ('I.D.Act').

5. Shri Aney further submits that in view of section 33 (1) of the I.D. Act, the employer is

precluded from making any change or changes in the service conditions of the employees working in the Undertaking in absence of prior permission. In absence of any such prior permission to go ahead to engage buses on hire; during the pendency of the complaint; would be a serious breach of section 33 (1) of the ID Act. He further submits that engagement of buses on hire would result in increase of the workload, working hours including change in some of the service conditions of the workers. If that be so, one has to conclude that the petitioners have made out a prima facie case before the Industrial Court. The Industrial Court has thus, committed an error in appreciating text and contents of the agreement dated 23.6.2004 and the intention of the parties behind said agreement.

6. Shri Aney further submits that respondent No.4 has erred in holding that the present scheme introduced by the respondent-employers has nothing to do with the service conditions of the employees since the scheme introduced is altogether a modified scheme than what was contemplted at the time of meeting dated 23.6.2006. He further submits that the Industrial Court is in error in holding that there would be no increase in workload, or working hours and that it will result in change of service conditions.

7. Lastly, Shri Aney submits that the respondent-Corporation had initially intended to take only 25% buses but now they intend to take many more buses on hire. He suibmits that such hiring of buses on large scale would lead to 30% increase in the compliment of buses with no reciprocal increase in the infrastructure as such this is a fit case to set aside the impugned order and grant of interim relief as prayed by the petitioners.

8. Per contra, Shri C.U. Singh,learned Senior Counsel appearing for the respondent Nos. 1 & 2 tried to support the impugned order, contending that minutes of the meeting dated 23.6.2004 could hardly be understood to mean an agreement or settlement in the industrial legislation. He further submits that the complaint is highly belated. The delay and lapses have not been explained by the petitioners. He tried to impress upon this Court that the respondents had issued an advertisement on 27.9.2005, inviting tenders from bus owners on hire making their intention to take buses on hire. The said advertisement was published in daily "Loksatta" and daily "Indian Express ". At no point of time, said scheme was opposed either by Union or by any worker till 12.7.2006.

9. Shri Singh submits that the matter of hiring buses was discussed at various levels even prior to 27.9.2005. The General Body of Respondent No.3-Corporation as well as State Government deliberated on the issues including implementation of scheme of hiring buses. The same was arrived at after going through technical status of the project highlighted by the experts as well as Central Road Transport Corporation, Pune.

10. Shri Singh submits that a report was prepared and submitted to respondent, popularly known as " Vision Document". The same was again deliberated at various levels before giving effect to the scheme of hiring of buses. He submits that hiring of buses will facilitate the transport activities and benefit to the public at large. That considering population pressure, present urban development and resultant excellerated economic development in Mumbai and surrounding districts have compelled the Corporation to take decision to take buses on hire on contract basis, with a view to meet public demand. In his submission, not a single service condition of any employees would be prejudicially affected.

11. Shri Singh; while denying the allegation that due to introducing scheme; workload of the

workers will be increased, submitted that the Corporation at present is having 913 drivers in their employement to ply 26 buses on 46 routes. He further submits that respondents have 1070 conductors out of them 913 are on daily duty on various routes. In his submission, as per frame of the scheme, no drivers will be hired. Bus ownrs are going to provide buses with their drivers; and that maintenance of the buses shall also not be with the respondent No.1-Corporation or its undertaking. In totality he submits that apprehension expressed by the petitioners that their work would get increased, is without any foundation. No prima facie case in this behalf or balance of convenience has been demonstrated muchless established by the petitioners, warranting interference with the impugned order.

12. Lastly, Shri Singh submitted that this is not a fit case wherein this Court should exercise writ jurisdiction in favour of the petitioners, especially, looking to the conduct of the petitioners. He submits that after the matter was adjourned on 31.8.206 in the Courts below complainants and their colleagues; employees of the respondents had taken law in their own hands. They pelted stones against running buses. They have turned violent. Two buses were damaged. Statements

in the various news papers of 1.9.06 and 2.9.2006 were brought to my notice. FIR was also lodged against the miscreants. He submits that such unlawful activities at the hands of vested interest needs to be dealt with sturn hand by appropriate orders by this Court, to avoid tendency to indulge in such nefarious activities.

13. Shri Singh pressed into service judgment of the Apex Court in the case of Mahadeo Shelke vs. Pune Municipal Corporation (1995) 3 SCC 33, to contend that injunction or interim relief is normally asked for and granted to prevent the public authorities from proceeding with the execution or implementation of any scheme of public utility or contracts granted for execution thereof. In his submission, public interest therefore, should be one of the relevant considerations in either exercising or refusing to exercise writ jurisdiction or for grant of interim relief. While exercising discretionary power, the writ court should also adopt the procedure of calling upon the petitioners to file a bond to the satisfaction of the Court that in the event of they failing in the petition to obtain the relief asked for, they would adequately compensate the respondents for the loss ensued due to the order granted in favour of the petitioners. He, thus, submits if interim relief is to be granted

in favour of the petitioners, it should be subject to the law laid down by the Apex Court in the case of Mahadeo Shelke (cited supra).

The Issue:

14. Rival submissions give rise to the consideration: Whether the petitioners have made out prima facie for grant of interim relief, whether balance of convenience lies in their favour and whether refusal to grant interim relief cause greater hardship to the applicant. Last but not the least, whether impugned order can be said to be perverse warranting interference in writ jurisdiction of this Court.

Consideration:

15. Having heard rival submissions, in the light of the rival pleadings and documents available on record and findings recorded by both the Courts below one of the question which needs to be addressed is : Whether Minutes of the meeting dated 23.6.2004 can be said to be an agreement and/or settlement; and, whether those minutes could be said to be within the sweep of Item 9 of Shedule IV of ther MRTU & PULP Act.

16. The settlement or agreement are divided into two categories: (1) those outside conciliation proceedings and (2) those within conciliation proceeding. The settlement which belongs to first category merely binds party to the settlement, but settlement belonging to second category has extended application since it is binding on all the parties to the industrial dispute. The Minutes of the Meeting held on 23.6.2006 under the presidentship of the Minister of Urban Development can hardly be said to be settlement or agreement as contemplated in industrial law. Therefore, minutes of the meeting are not actionable under Item 9 Sch.4 of the Act. Finding recorded by the Courts below on this count cannot be faulted.

17. Delay in preferring the complaint has rightly resulted in rejection of the interim relief. It is not in dispute that on 25.6.2006 itself the complainants were aware about the matter of hiring buses by the Undertaking. Even much prior to filing of complaint, they were aware about the scheme sought to be implemented by the Corporation; which is evident from the Minutes dated 23.6.2006. The Corporation had invited tenders from the bus owners through news paper publications and the same were processed. One fine morning, i.e. practically

about after 10 months the complainants chose to file complaint and prayed for interim relief without explaining delay in the circumstances, application of the complainant for interim relief was rightly rejected by the Tribunal.

18. The identity of the subject matter of conciliation and alleged breach thereof could not be established by the complainants. Prima facie, one fails to understand how introduction of the scheme to hire buses on contract basis for providing transport services to the citizen and/or residents by the Corporation can be a subject matter of industrial dispute, that too; at the instance of six workers. Be that as it may, since the Conciliation Officer is seized of the matter it would not be proper to dwell upon said question though respondents raised the same. However, the apprehension that services of the workers would get affected has also no foundation in law and facts. Working hours of the excisting workers are not going to be changed or affected. Introduction of hiring buses will provide additional avenue for employment of others resulting in absorbing surplus staff who were otherwise liable to be retrenched. The complainants are expected to welcome potential of the scheme to provide additional employment. The public project cannot be allowed to be stalled in

the manner in which complainants are trying. Though complainants have stated that they are filing complaint in the representative capacity, however, one fails to understand how this complaint can be entertained in a representative capacity without there being any compliance of Order 1 Rule 8 of the C.P.C. In the circumstances, moot question is whether 6 persons can be allowed to stall the public project which was already known to the complainants. Considering economic advancement, urban development need to introduce sound public transport system to arrest menace of heavy traffic on the public roads at the instance of chosen few. No prejudice could be demonstrated by the petitioners nor could they establish balance of convenience in their favour. As a matter of fact, no prima facie case can be said to have been established by the petitioners.

19. Having said so, findings recorded by the Court below and the view taken by it, can hardly be said to be perverse. No perversity could be demonstrated by the petitioner. View taken is a reasonable and possible view warranting no interference in the writ jurisdiction of this Court.

20. A writ of ceretiorai is a legal matter of sound discretion and cannot be granted if there is any negligence or omission on the part of the

applicant to assert his right as taken in conjunction with lapse of time and other circumstances causing prejudice to other party. (see Moon Mills vs. Industrial Court, Mumbai, AIR 1967 SC 1450).

21. The ceretiorari lies wherever a body of persons having legal authority to determine questions affecting rights of subjects and having a duty to act judicially acts in excess of its legal authority. A writ of ceretiorari is not meant to take place of an appeal and that its purpose is only to determine whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of law which it was meant to administer.(see Biswabahan vs. Gopal Chandra, AIR 1967 SC 895.) This is a discretionary remedy and is not a matter of right. It will be granted or denied taking into account all the circumstances of each particular case, as the ends of justice may require and in accordance with sound public policy. Error in appreciation of documentary evidence or in drawing inferences which cannot be said to be error of law apparent on the face of the record (see Kaushilya Devi vs. Bachittar Singh,AIR 1960 SC 1168).

22. In the aforesaid backdrop, and taking

overall view of the matter, this is not a fit case warranting interference with the impugned order. Petition is, therefore, liable to be dismissed in limine.

23. At this stage, learned Counsel appearing for the petitioners prayed for extension of status-quo order granted by the Industrial Court for a period of 2 weeks. The said prayer was strongly opposed by the learned Counsel for the respondent Nos. 1 & 2and urged that considering the contention of the petitioners, who have indulged in destroying property of the respondent-Corporation by pelting stones on the running buses and damaged few buses, should not be shown any leniency by this Court by extending interim relief.

24. Having examined the matter at length and having given thoughtful consideration, having seen the conduct of the petitioners and absence of their representative capacity to file complaint in question, this is not a fit case for extension of period of status-quo which is due to expire with the pronouncement of this order. Needless to mention that all observations made are prima facie.

. In the result, petition is dismissed in

limine with no order as to costs.

(V.C.DAGA,J.)